

Disability Access Requirements in New Construction Housing Projects Receiving Public Support in Washington State

Housing projects in Washington State that receive support from public funding are subject to several overlapping sets of requirements related to ensuring accessibility for people who have disabilities. These include the Federal Fair Housing Act (42 U.S.C. 3604 et. seq.), the Washington State Law Against Discrimination (RCW 49.60.222), the Washington State Building Code (WAC 52-50), the Americans with Disabilities Act of 1990 (2 U.S.C. Part B) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The applicability of each of these laws and their enacting regulations must be considered in turn when determining which disability access requirements and design standards apply to any particular housing construction project receiving support from public funds. Often several, or all, will apply. In which case the applicable requirements must be viewed collectively, and in each instance where there is a difference in scoping or design standard, the most stringent among those applicable must be met.

Standards Applicable to All Multi-family Housing Projects:

The Federal Fair Housing Act, Washington State Law Against Discrimination, and Washington State Building Code apply to all residential buildings having four or more units, regardless of whether they are privately owned or publicly assisted.

The design standards applicable under the Fair Housing Act are the Fair Housing Accessibility Guidelines (24 CFR Part 100). The Washington State Building Code, is the applicable standard for the Washington State Law Against Discrimination. The State Building Code has been determined to be substantially equivalent to the Fair Housing Accessibility Guidelines, and in some areas the state code is more stringent than the federal guidelines. Of all the accessibility requirements that apply to publicly assisted housing projects, only the Washington State Building Code is enforced by local building code officials. Those responsible for publicly assisted housing projects may not rely on local building code officials to explain or interpret the accessibility requirements under the other applicable laws, nor may those officials waive any requirements under those laws.

Standards Applicable to Federally Assisted Housing Projects:

In addition to the standards cited above, projects benefiting from federal funds in the amount of \$2,700 or more, must also comply with Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 scopes the required number of accessible units by project, rather than by residential building or facility, making the facility type irrelevant.

24 CFR 8.22 (a) New multifamily housing projects (including public housing and Indian housing projects as required by Sec. 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in Sec. 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

EXECUTIVE ORDER 00-01

PROMOTING THE USE OF APPRENTICES IN PUBLIC WORKS PROJECTS

WHEREAS, a highly skilled workforce is essential for enhanced economic growth and the continued prosperity of workers throughout our state;

WHEREAS, apprenticeship is a proven, highly effective training model, as indicated by the 1998 Workforce Training and Education Coordinating Board report, providing consistent wage progression to family wage careers;

WHEREAS, the 1998 Employment Security Department report, *Studies in Industry and Employment*, highlighted that apprenticeship programs in Washington are "effective but underutilized;"

WHEREAS, shortages of skilled construction workers are currently limiting job growth and affecting our state's economy. This "skill gap" problem will continue to grow, due to the large number of skilled worker retirements and increased construction activity throughout the state;

WHEREAS, the responsibility to train the next generation of skilled workers rests with both the public and private sectors;

WHEREAS, the state of Washington is committed to working in partnership with labor and business to create a skilled workforce that reflects the diversity of our population and promotes community development throughout our state, in both urban and rural areas;

WHEREAS, recent actions of the Washington State Apprenticeship and Training Council (WSATC) have made apprenticeships more widely available in the construction industry;

WHEREAS, apprenticeship utilization programs have proven to be effective in the Cities of Seattle and Tacoma, the Port of Seattle, and King County and in the following manners:

- i. the next generation of skilled workers are being trained from within our own communities;
- ii. public resources are being used effectively to construct public facilities in a cost efficient manner, while making training opportunities available to a wide array of people in our state;
- iii. the tax base is expanding, while at the same time reducing unemployment and underemployment; and
- iv. women and minority participation in the workforce is being encouraged and is increasing in the construction trades.

WHEREAS, growing participation in apprenticeship programs today will ensure a viable workforce in the construction trade industry tomorrow;

NOW THEREFORE, I, Gary Locke, Governor of the State of Washington, by virtue of the authority vested in me do hereby direct:

All state agencies under the authority of the Governor shall require the participation of WSATC-registered apprentices in all public works as follows:

1. Minimum Levels of Apprenticeship Participation shall be:

- A. For contracts awarded from July 1, 2000 through December 31, 2002, 10% of total labor hours for projects of more than \$2 million;
- B. For contracts awarded from January 1, 2003 through December 31, 2003, 12% of total labor hours for projects of more than \$2 million;
- C. For contracts awarded from January 1, 2004 forward, 15% of total labor hours for projects of more than \$1 million.

2. Workforce Diversity Goals. The voluntary goal of this executive order is to have as much as one-fifth of the apprentice hours performed by minorities, and one-sixth of the apprentice hours performed by women.

3. Annual Statistics. State agencies shall collect the following data:

- A. the name of each project;
- B. the dollar value of each project;
- C. the date of the contractor's Notice to Proceed;
- D. the number of apprentices and labor hours worked by them, categorized by gender, ethnicity, and trade or craft;
- E. the number of journey-level workers and labor hours worked by them, categorized by gender, ethnicity, and trade or craft; and
- F. the number, type, and rationale for the exceptions granted, pursuant to Section 5.

4. Technical Assistance will be provided by the Department of Labor and Industries' Apprenticeship Section as follows:

- A. offering staff training and development with the Department of General Administration and other agency contract administrators;
- B. disseminating information regarding this executive order to apprenticeship stakeholders during the regular WSATC quarterly meetings;

- C. working together with the Department of General Administration and local communities to forecast and report expected apprentice needs; and
- D. assisting the Department of General Administration in compiling apprenticeship data and determining apprentice availability.

5. Exceptions. Agency directors may adjust the requirements of this executive order, for a specific project for the following reasons:

- A. the demonstrated lack of availability of apprentices in specific geographic areas;
- B. a disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- C. participating contractors have demonstrated a good faith effort to comply with the requirements of this executive order; or
- D. other criteria the agency director may deem appropriate, which is subject to prior review by the Office of the Governor.

6. State Administrative Agency. The Department of General Administration shall administer this order and execute the following responsibilities:

- A. disseminate information regarding this executive order to affected state agencies and contractors;
- B. develop minimal necessary program processes, documents and forms;
- C. collect statistical data from affected agencies;
- D. summarize and compile agency data by March 1 of each year and provide reports when requested by the Governor; and
- E. make recommendations on modifications or improvements to the process.

7. Subcommittee of State Apprenticeship Council. The Washington State Apprenticeship Council shall appoint a subcommittee to respond to requests from the Department of General Administration for guidance on the exceptions to this executive order described in section 5. The subcommittee shall consist of two representatives of business, two representatives of labor, and one representative of the public.

8. Access to apprenticeship. The State Apprenticeship Council shall work with the Employment Security Department to expand access to apprenticeship programs within each service delivery area of the state employment and training system. The point of access shall be through WorkSource, the state's one-stop system, and shall include a convenient means for individuals to apply for apprenticeship programs.

9. Expanding apprenticeship opportunities. The State Apprenticeship Council shall work with the Workforce Training and Education Coordinating Board to inform parents, educators, and students about opportunities in apprenticeship.

This Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be Affixed at Olympia this 3rd day of February A.D., Two thousand.

GARY LOCKE
Governor of Washington

BY THE GOVERNOR:

Secretary of State

These required accessible units are to be distributed, to the extent feasible, throughout projects and sites and available in a sufficient range of sizes and amenities to allow people with disabilities a range of living options comparable to those who do not have a disability (24 CFR 8.26).

The Uniform Federal Accessibility Standard (UFAS 24 CFR part 40)* is the design standard under Section 504, except that "UFAS may not be used to waive or lower the minimum of five percent accessible units required by sec. 8.22 (b) or to apply the minimum only to projects of 15 or more dwelling units, " (24 CFR 8.32 (d)) and except to the extent that these projects may also be subject to additional requirements in those areas in which the State Building Code is more stringent.

Standards Applicable to Projects Assisted by State or Local Government:

Title II of the Americans with Disabilities Act applies to any housing project that receives assistance through an entity of state or local government. If all or part of that assistance is in the form of federal funds that pass through a state or local government entity to the project, such funding would confer both ADA Title II and Section 504 responsibilities related to ensuring accessibility for people who have disabilities.

The residential scoping requirements under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) are as follows:

234.1.1 Accessible Dwelling Units. In residential facilities, at least five percent, but not less than one unit, of the total number of dwelling units in a facility shall comply with 1101 and 1102.

EXCEPTION: Where residential facilities contain four or less dwelling units, at least five percent, but not less than one unit, of the total number of dwelling units in the project shall comply with 1101 and 1102.

234.1.2 Accessible Dwelling Units, Alterations. Where dwelling units are altered or added, the requirements of 234 shall apply only to the dwelling units being altered or added until the number of accessible dwelling units complies with the minimum number required for new construction.

234.1.3 Communication Features. In residential facilities, at least two percent, but not less than one unit, of the total number of dwelling units in a facility shall comply with 1101 and 1103.

EXCEPTION: Where residential facilities contain four or less dwelling units, at least two percent, but not less than one unit, of the total number of dwelling units in the project shall comply with 1101 and 1103.

234.1.4 Communication Features, Alterations. Where dwelling units are altered or added, the requirements of 234 shall apply only to the dwelling units being altered or added until the number of dwelling units with accessible communication features complies with the minimum number required for new construction.

234.1.5 Dispersion. Dwelling units required to comply with 1102 and dwelling units required to comply with 1103 shall be dispersed among the various types of dwelling units in the facility and shall provide choices of dwelling units comparable to and integrated with those available to other residents.

EXCEPTION: Single level dwelling units shall be permitted where spaces and amenities are equivalent to those provided in multi-level dwelling units.

ADAAG would also provide the applicable design standards for such projects, except to the extent that they may also be subject to more stringent provisions under the State Building Code.

* The federal Architectural Transportation Barrier Compliance Board has proposed to harmonize UFAS and ADAAG into a single enforceable standard for both applications. If HUD adopts the Access Board proposal, the new ADAAG would replace UFAS as the design standard for projects covered under Section 504.